IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.4072 OF 1995

Bank of India ...Plaintiffs

vs.

Protech Switchgears Ltd. ...Defendants

Mr.C.M.Lokesh i/b Mr.A.R.Bhole & Co. for the Plaintiffs

CORAM: A.S.OKA,J.
DATE : OCTOBER 22,2007

JUDGMENT:

1. The evidence of the only witness examined by the plaintiffs was recorded on 11th October 2007. Today, the suit is listed for recording of evidence of the defendant and/or for arguments. None appears for the defendants. Hence, I have heard the submissions of the learned counsel appearing for the plaintiffs.

2. According to the case of the plaintiffs on 7th November 1992, one Mr. T.V.Bhaskar Mani, the Proprietor of M/s. D.M.Industries drew following four bills of exchange drawn on the defendant for valuable consideration.

Bill No.	Amount	Due date
DMI/92/58	Rs.1,11,250/-	3/1/93
DMI/92/59	Rs.1,11,250/-	18/1/93

DMI/92/60	Rs.1,11,250/-	23/1/93
DMI/92/61	Rs.1,00,125/-	2/2/93

Total	Rs.4,33,875/-	
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3. According to the case of the plaintiffs the said bills were accepted by the defendants and delivered to the plaintiffs by the Drawer. The defendants failed to honour the said bills of exchange on the respective due dates. Therefore, by notice dated 13th May 1995, the plaintiffs through a Notary Public demanded payment of the amounts payable under the said bills. The defendant failed to make payment within a period of 30 days and therefore, the said four bills were dishonoured for non payment. Accordingly, Mr.J.C.Patel, a Notary issued a certificates. By Advocate's notice dated 12th August 1995, the plaintiffs called upon the defendants to pay the amount payable in respect of the said four bills along with the interest. The notice was served but the compliance was not made by the defendants. Therefore, the present suit is filed for recovery of the amounts payable under the said further four bills with further interest.

4. The defendants have filed written statement. The first plea in the written statement is that a leave under clause 12 of the Letter Patent has not been obtained though the entire

cause of action has arisen outside Bombay. The second contention is M/s.D.M.Industries and its proprietor is not impleaded as a party defendants though they were necessary parties and the third contention is that the rate of interest at the rate of 22.25% p.a. was not agreed by the defendants.

5. Following issues were settled on 7th September 2007 :

i) Whether this court has territorial jurisdiction to entertain and try this suit ?

ii) Whether the suit is not maintainable on account of non-joinder of M/s.D.M.Industries as a party defendant ?

iii) Whether the plaintiffs prove that the rate of interest was agreed at 22.25% p.a. ?

iv) Whether the plaintiffs are entitled to a decree as prayed for ?

v) What decree and order ?

6. The plaintiffs led evidence of Mr.Suryanarayan by filing his Affidavit in lieu of examination in chief. His examination in chief has been recorded and the defendants have failed to cross examine the said witness. The said witness

has proved in his evidence four bills of exchange on which the plaintiffs are relying upon.

7. The plaintiffs have also proved certificates issued by Mr.J.C.Patel, Notary which are at Exh.P-7 to P-10. The said certificates record that the defendants had assured to pay within 30 days. Thereafter, a notice of demand dated 12th August 1995 issued by the Advocate for the plaintiffs. An office copy of the said notice has been produced and proved. Even the acknowledgement of the said notice has been duly proved. The plaintiffs have produced certified true copy of the extract of the account of M/s.D.M.Industries showing entries relating to the dishonoured bills and interest payable on the amounts payable thereunder. The said extract has been duly certified under the Bankers' Book Evidence Act,1891. Thus, the liability of the defendants has been duly proved by the plaintiffs. The defendants have raised plea of territorial jurisdiction. However, the documents on record and especially bills of exchange show that the same were issued at Bombay and the same were payable in Bombay. Therefore, the plea of lack of jurisdiction cannot be accepted.

8. In so far as non impleadment of drawer of bills of exchange is concerned, the legal position is very much settled. The plaintiffs have filed the suit against the

defendants being the acceptors of the bills of exchange and hence, the drawer is not a necessary party to the suit.

9. The claim in the suit has been duly established by the plaintiffs by oral evidence and the aforesaid documents. The plaintiffs have prayed for further interest at the rate of 21.25% p.a. on the principal amount. However, considering the facts and circumstances of the case, further interest will be granted at the rate of 12% p.a. Hence, I pass the following order :

. The suit is decreed in terms of prayer clauses (i) and (ii) with modification that further interest payable on the sum of Rs.3,00,000/- will be at the rate of 12% p.a. from the date of institution of suit till realization or payment. Certified copy is expedited.

JUDGE